

REMARKS

This application has been reviewed in light of the Office Action dated May 23, 2006.

Claims 1, 3-8, 10-12, 14, 15 and 17-29 are now presented for examination. Claims 2, 9, 13 and 16 have been cancelled without prejudice. Claims 1, 3, 5-8, 10, 11, 14, 15 and 17-24 have been amended to more particularly point out and distinctly claim the subject matter regarded as the invention. Claims 25-29 have been added, to provide the applicants with a more complete scope of protection for their invention. Claims 1, 20, 26 and 28 are independent. Favorable review is respectfully requested.

In the Office Action Summary, the Examiner indicated that the drawings originally filed were accepted. However, the Examiner enclosed a copy of a Draftsperson's Patent Drawing Review indicating that corrected drawings were required. Clarification from the Examiner is respectfully requested as to whether replacement drawing sheets will be required in this application.

The disclosure was objected to because of informalities. In response to the Examiner's comments, a paragraph has been added to page 8 of the specification, pointing out elements in the disclosed embodiment and in the figures corresponding to features recited in the claims. The applicants wish to emphasize that the claims are not limited to the particular embodiments shown and described in the specification. The added paragraph points out features already mentioned in the specification and shown in the figures, and which correspond to recitations in the originally-filed claims. Accordingly, no new matter has been added.

Claims 7 and 20-24 were objected to under 37 C.F.R. § 1.75 as being in improper form. These claims have been carefully reviewed and revised in light of the Examiner's comments. In particular, it is noted that claim 7, while still a multiple dependent claim, now explicitly recites the features of claim 4. Claim 20 has been rewritten as an independent claim, with claim 21 dependent therefrom. Claims 22-24 have been rewritten to depend directly or indirectly from claim 1.

New claim 25, dependent from claim 20, recites a system including a plurality of orthopaedics devices, in which the orthopaedics devices include at least one fusion device and

at least one non-fusion device. This claim language is clearly supported in the specification at least at page 7, lines 20-22, and in Figure 1.

Independent claims 26 and 28 present claim 7 in independent form (with claims 26 and 28 reciting the features of intervening claims 5 and 6 respectively). These claims are believed to be allowable for reasons detailed below. New claims 27 and 29 depend from claims 26 and 28 respectively; the language of this claim is clearly supported in the specification at least at page 7, lines 6-18.

The applicants note with appreciation the Examiner's comment that claim 16 would be allowable if rewritten in independent form. In response to the Examiner's comment, independent claim 1 has been amended to include all of the features of claim 16, including those features recited in intervening claims 9 and 13. Claim 20, which is now presented as an independent claim, has been similarly revised so that it recites all of the features of claim 16. (Claims 9, 13 and 16 have accordingly been cancelled.) Dependent claims 5-8, 10, 11, 14, 15, 17-19, 21 and 22 have been amended so that the recitations thereof conform to the revisions of the independent claims. Accordingly, it is believed that independent claims 1 and 20, together with all of the claims directly or indirectly dependent therefrom, are allowable.

Claim 2 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. This claim has been cancelled, thereby rendering the rejection moot.

Claims 1, 5, 6, 8-11, 13-15 and 17 were rejected under 35 U.S.C. § 102(b) as being anticipated by Martin (U.S. Pat. No. 5,672,175). Claim 4 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Martin in view of Saurat et al. (U.S. Pat. No. 6,296,644). Claims 9 and 13 have been cancelled, thereby rendering the rejection of those claims moot. All of the other rejected claims are now believed to be in condition for allowance, for the reasons given above.

New independent claims 26 and 28 present all of the features of claim 7, and in particular explicitly recite the features of claim 4. Claims 26 and 28 are believed to be patentable over the combination of Martin and Saurat et al. cited by the Examiner, for the following reasons.

As noted by the Examiner, Martin does not disclose a mobile joint included in one of the attachment means, as required by the claims. In addition, Martin is not understood to either disclose or suggest a type of mobile joint chosen from the group recited in claims 26

and 28. Martin is understood to disclose a device in which rods surrounded by springs are anchored at different vertebrae; this arrangement articulates by virtue of the rods being flexible (col. 8, lines 63-66, and Figure 2). In the assembly of Saurat et al., by contrast, non-flexible modules are articulated together by ball-and-socket joints at the ends of the modules (col. 4, lines 36-40, and Figure 1). It is noteworthy that the modules of Saurat et al. do not include springs, do not exert any elastic forces, and for that matter do not by themselves generate forces in any direction. Martin makes it clear that in his system, the rods are anchored to the vertebrae with limited degrees of freedom and exert elastic forces (col. 5, lines 18-27). One following the teaching of Martin would therefore not be motivated to incorporate non-elastic rods (or modules) with highly mobile joints at both ends thereof.

A combination of Martin and Saurat et al. would at best yield an arrangement of rods with springs, wherein the rods are attached to the vertebrae by ball-and-socket joints. In such an arrangement, articulation along the spine would occur by movement at the joints, and not by flexure of the rods; the rods would therefore not be able to provide elastic forces as taught by Martin. Stated another way, the introduction of mobile joints between rods (as taught by Saurat et al.) would render the rods unsuitable for exerting correcting forces on the spine (as taught by Martin).

There is no suggestion in either reference that it would be desirable to combine the two references, and a combination of the references would render the prior art unsatisfactory for its intended purpose. Accordingly, it is respectfully submitted that a *prima facie* case of obviousness cannot be established with respect to independent claims 26 and 28. MPEP § 2143.01.

The other claims in this application are dependent, either directly or indirectly, from the independent claims discussed above and are therefore believed to be patentable for the same reasons. Since each dependent claim is deemed to define an additional aspect of the invention, however, consideration of each on its own merits is respectfully requested.

In view of the foregoing amendments and remarks, favorable consideration and early passage to issue of the application are respectfully requested.

The applicants' undersigned attorney may be reached by telephone at (212) 801-2108.
All correspondence should continue to be directed to the address listed below, which is the
address associated with Customer Number 31108.

Respectfully submitted,



Paul J. Sutton
Registration Number 24,201
Attorney for Applicants
Fax: (212) 801-6400

GREENBERG TRAURIG, LLP
200 Park Avenue
New York, NY 10166

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